

EXHIBIT D

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION,) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)

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13
14 Tuesday, January 22, 2019
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23 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
24 CONFIDENTIALITY REVIEW
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26
27 Videotaped 30(b)(6) Deposition of
28 Walmart, through the testimony of Susanne
29 Hiland, held at 4206 South J.B. Hunt Drive,
30 Rogers, Arkansas, commencing at 8:22 a.m., on
31 the above date, before Debra A. Dibble,
32 Certified Court Reporter, Registered
33 Diplomate Reporter, Certified Realtime
34 Captioner, Certified Realtime Reporter and
35 Notary Public.

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38
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1 reporter today is Debbie Dibble. And
2 she will please now swear in the
3 witness.

4 SUSANNE HILAND,
5 having first been duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BOWER:

9 Q. Good morning, Ms. Hiland. How
10 are you today?

11 A. I'm fine, thank you.

12 Q. Have you ever provided sworn
13 testimony on behalf of Walmart in the past?

14 A. I have.

15 Q. Okay. And when was the first
16 time you provided such testimony?

17 A. It would have been sometime in
18 the late '90s.

19 Q. And what was that regarding?

20 A. A workmen's comp case.

21 Q. Was that a deposition?

22 A. Yes, it was.

23 Q. And where was that case
24 located, if you can recall?

1 A. Yes.

2 Q. Okay.

3 And so just to make sure we're
4 all on the same page, I just want to go over
5 a couple of those rules, just so there's no
6 issues moving forward. I think probably the
7 most important one is to make sure that you
8 understand my question. So if at any point
9 you don't understand the question, please
10 just let me know and I'll try to rephrase it.
11 Okay?

12 A. Okay.

13 Q. If you don't ask me to rephrase
14 it, I'll assume that you understand the
15 question as I asked it. Okay?

16 A. Okay.

17 Q. And you understand that your
18 answers today are on behalf of Walmart;
19 correct?

20 A. Yes.

21 Q. And that tomorrow you will be
22 providing your own fact testimony; is that
23 correct?

24 A. Yes.

1 Q. And do you understand,
2 therefore, that the testimony you will give
3 today can be binding on the corporation?

4 A. Yes.

5 Q. Okay. How long have you been
6 working at Walmart?

7 A. 29 years.

8 Q. And I don't want to spend too
9 much time on your employment history, but can
10 you just -- let's start maybe in 2005, give
11 or take. Going forward. Okay?

12 A. Yes.

13 Q. What was your position in 2005?

14 A. At the start of 2005, I was a
15 regional director for operations. And then I
16 transitioned to a director of professional
17 services.

18 Q. And when would that transition
19 occur?

20 A. March of 2005.

21 Q. Okay.

22 During that time period, did
23 you have oversight over Walmart pharmacies?

24 MS. TABACCHI: Object to the

1 form.

2 THE WITNESS: In the regional
3 role I had oversight, yes.

4 Q. (BY MR. BOWER) And what about
5 in the director role?

6 A. In the director role, I had
7 responsibilities for Board of Pharmacy
8 issues.

9 Q. What was your next position at
10 Walmart?

11 A. The next position was a
12 promotion to senior director. It was the
13 same department, but we -- the name of the
14 department changed to regulatory affairs.

15 Q. And when did that occur?

16 A. 2009.

17 Q. And just generally what were
18 your duties and responsibilities as the
19 senior director in regulatory affairs? Is
20 that an accurate description of your title at
21 that time?

22 A. That was my title.

23 Q. Okay.

24 And what were your -- just a

1 general description of your duties and
2 responsibilities in connection with that
3 title.

4 A. I began to supervise the
5 directors that had responsibility for Board
6 of Pharmacy regulation.

7 I also had responsibility for
8 our licensing and registration function for
9 our facilities. And I had federal regulatory
10 responsibility as it related to our licensed
11 pharmacies.

12 MS. TABACCHI: Zach, of course,
13 you're welcome to inquire about the
14 witness's personal background, but
15 this is all beyond the scope of the
16 notice.

17 MR. BOWER: I'm just trying to
18 get, like I said, a very high level.

19 MS. TABACCHI: I just want to
20 make sure we're on the same page. I'm
21 not going to object to every question
22 during this portion.

23 MR. BOWER: No, I understand.

24 I'm just going to move quickly through

1 this.

2 Q. (BY MR. BOWER) And what was
3 your next role at Walmart after senior
4 director of regulatory affairs?

5 A. For a short period of time in
6 July 2011, I was senior director of
7 compliance and quality assurance.

8 Q. So that was in 2011; is that
9 correct?

10 A. Yes.

11 Q. And then your next role after
12 that was?

13 A. February 2012 of -- I'll likely
14 not get the title correct, but it was senior
15 director of clinical quality assurance.

16 Q. Okay.

17 A. And that was the general title.
18 I'd have to look back to get the title
19 exactly correct.

20 Q. Approximately how many titles
21 would you say you've had at Walmart in your
22 29 years?

23 A. One -- a different one every
24 three years approximately.

1 Q. What's your current title?

2 A. My current title -- on paper my
3 title is Senior Director II, business
4 strategy. That's an HR title.

5 In function, my title is senior
6 director of professional relations,
7 professional practice standards and clinical
8 services.

9 Q. Do you believe you are the
10 person at Walmart with the most knowledge of
11 Walmart's maintenance and effective controls
12 against diversion?

13 MS. TABACCHI: Object to the
14 form.

15 THE WITNESS: I believe that
16 I'm prepared to speak to that topic on
17 behalf of Walmart.

18 MR. BOWER: I move to strike
19 that answer.

20 Q. (BY MR. BOWER) I just would
21 ask you to please carefully listen to my
22 questions and answer the questions that I
23 ask. Okay?

24 A. Yes.

1 that his associates would have with DEA
2 providing reporting, working collaboratively
3 with the DEA and the process that the
4 associates went through to understand orders
5 that were outlier orders as they processed
6 orders through the distribution center.

7 Q. And what was the process that
8 the associates went through to understand the
9 orders that were outliers?

10 A. Much of it was
11 experience-based. There were very tenured
12 associates, and their jobs were
13 specifically -- they were specifically
14 assigned to the controlled substance
15 processing areas. And so they were very
16 familiar with practices and what might be out
17 of the ordinary.

18 Q. What specifically would they
19 look for?

20 A. They would be looking for
21 orders that were of an unusual size. They
22 would be monitoring for any type of an order
23 that was requested outside of a normal
24 ordering schedule that Walmart had

1 established. And those were the -- those
2 were the things that they were looking for.

3 Q. What do you mean by "normal
4 ordering schedule that Walmart had
5 established"?

6 A. So for Walmart, the way that
7 our distribution was set up, every pharmacy
8 only received an order once a week. And so
9 that was the schedule. It was -- it was a
10 certain set of stores that would order four
11 days out -- one day of the week, but we only
12 distributed four days out of the week. And
13 so they could see also if there were manual
14 orders coming in or requests for some
15 different order schedule.

16 Q. So they were, for example,
17 looking at as to whether a store ordered more
18 than once a week? Is that correct?

19 A. What they would look for is --
20 there was a process for a store to order
21 outside of their normal pattern, so they
22 would be looking for those. And then
23 understanding why they needed it outside of
24 that normal day.

1 Q. And what would they look for
2 with respect to normal pattern?

3 A. That -- so that would be one of
4 the patterns that they would look for, was
5 order pattern, was it outside of the cycle.
6 The other thing that they would do is reach
7 out to stores and have conversations about
8 the needs if they noticed there was something
9 out of the ordinary.

10 Q. And this was occurring as of
11 1996. Is that your understanding?

12 A. My understanding was that there
13 were -- there were processes in place before
14 we distributed C-IIs, and that started in
15 2002. So that when the DC was opened in
16 2002, there had been a lot of conversations
17 with the DEA prior to that, around current
18 processes, what needed to carry over and how
19 to open that building.

20 Q. Is it your testimony that
21 Walmart did not distribute C-IIs prior to
22 2002?

23 A. We did not self-distribute
24 C-IIs prior to that time.

1 MS. TABACCHI: Object to the
2 form.

3 THE WITNESS: In -- can you
4 specify a time frame?

5 Q. (BY MR. BOWER) Sure. Prior to
6 2006.

7 A. Those interactions would be
8 with Scott Culver. Scott relayed that he
9 interacted with the DEA prior to 2006 in his
10 role.

11 Q. Did Mr. Culver convey to you
12 that he relied on those interactions with the
13 DEA in determining what policy would be used
14 to monitor for orders of controlled
15 substances?

16 MS. TABACCHI: Object to the
17 form. Beyond the scope.

18 You may answer.

19 THE WITNESS: What he conveyed
20 to me was that he worked interactively
21 with the DEA around requirements and
22 understanding what their expectations
23 were that ranged from physical
24 security of the buildings, the

1 shipping mechanisms to ensure safe
2 transport, as well as any reporting or
3 processes that the associates were
4 conducting as they were order
5 monitoring.

6 Q. (BY MR. BOWER) And how many
7 associates during this time period that you
8 covered with Mr. Culver were -- had the
9 responsibility to review orders of controlled
10 substances?

11 MS. TABACCHI: Object to the
12 form. Beyond the scope.

13 THE WITNESS: There would be a
14 number of associates in the
15 distribution center, depending on the
16 distribution center. But it would be
17 limited to the management of those
18 distribution centers.

19 Q. (BY MR. BOWER) Well,
20 approximately how many associates in each
21 distribution center would have that
22 responsibility?

23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

1 for unusual orders of unusual size as the
2 orders were being processed.

3 Q. And how would they determine
4 whether an order was of unusual size?

5 A. These were --

6 MS. TABACCHI: Beyond the
7 scope.

8 THE WITNESS: These were
9 long-tenured associates that
10 understood the business and the fact
11 that we were self-distributing. So
12 they saw the -- they saw the patterns.
13 They worked with it every single day.

14 Q. (BY MR. BOWER) They were using
15 their memory? Is that correct?

16 MS. TABACCHI: Object to the
17 form.

18 THE WITNESS: They were using
19 their experience.

20 Q. (BY MR. BOWER) Were they using
21 any written information to make those
22 judgments?

23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

1 THE WITNESS: I see that, and I
2 also see in that sentence that -- the
3 point of working collaboratively with
4 the DEA, which I believe that we have
5 a history of doing.

6 Q. (BY MR. BOWER) Did Walmart
7 rely on guidance from the DEA in implementing
8 or designing its suspicious order monitoring
9 programs?

10 A. We didn't solely rely on
11 guidance, but we certainly had conversations
12 with the DEA regarding our plans, and took
13 into consideration any recommendations,
14 thoughts, suggestions that they had for how
15 we established our policies and practices.

16 Q. And what conversations are you
17 referring to specifically?

18 A. We have -- so in speaking with
19 Scott Culver, Scott relayed the conversations
20 that he had with the DEA in establishing the
21 C-II facility, our distribution facility,
22 even before any plans were built. Blueprints
23 were reviewed. Contractors were -- or at
24 least DEA-approved contractors to build the

1 facility. Over multiple interactions with
2 the DEA, they've seen our processes. They've
3 reviewed our reports. They've asked for
4 additional information which we've provided.
5 And so we have a -- we have a long history of
6 interaction, positive interaction, and
7 collaborative interaction with the DEA.

8 Q. (BY MR. BOWER) Okay. And now
9 I want to ask probably a better question than
10 the last one. So my question is more focused
11 than that. I want to ask specifically what
12 conversations has Walmart had with the DEA
13 regarding designing or implementing its
14 suspicious order monitoring program for
15 controlled substances?

16 MS. TABACCHI: Object to the
17 form.

18 THE WITNESS: The conversations
19 have occurred over time, again, as the
20 distribution center was established
21 and reporting was pulled and reviewed.
22 As a part, one part of our order
23 monitoring, the DEA reviewed those
24 reports, and at one point asked us to

1 begin sending those to them on a
2 regular basis. I learned that through
3 a conversation with Scott Culver.

4 And then through the years, as
5 we've made certain changes, those
6 changes have been discussed through
7 audits that the DEA has conducted at
8 various of our facilities, where
9 they've -- they've actually asked to
10 review our order monitoring process.
11 It's a part of their audit on their
12 audit checklist, and we've -- we've
13 never had a reported deficiency in the
14 way that they've reviewed those
15 programs.

16 Q. (BY MR. BOWER) When was the
17 first time a conversation occurred between
18 someone at Walmart and someone at the DEA
19 regarding Walmart's design or implementation
20 of a suspicious order monitoring program?

21 MS. TABACCHI: Object to the
22 form.

23 THE WITNESS: So from an
24 overall perspective?

1 MS. TABACCHI: Beyond the scope
2 of the notice from a time period
3 perspective. I'm sorry.

4 THE WITNESS: Before we
5 started -- before we stood up the
6 distribution center to distribute
7 opioids, C-IIs, Scott Culver reached
8 out to the DEA to understand, make
9 sure that all of the plans that we had
10 that are inclusive of our obligations
11 around preventing diversion were
12 discussed with the DEA, and then,
13 again, ongoing conversations have
14 occurred as our program has evolved.

15 Q. (BY MR. BOWER) Were those
16 initial discussions that Scott Culver had
17 with the DEA specific to order monitoring?

18 A. There were -- there were
19 conversations around reporting and what
20 was -- what was expected. And how they --
21 how the operation would -- would be
22 established.

23 Q. And what did Walmart understand
24 that the DEA expected at that time?

1 MS. TABACCHI: Beyond the
2 scope.

3 THE WITNESS: That our --

4 MS. TABACCHI: You may answer.

5 THE WITNESS: So the way that
6 our policies and procedures were set
7 up reflected our understanding of what
8 our obligations were at that time.

9 Q. (BY MR. BOWER) Well, I'm just
10 trying to get a little bit more information
11 as to what Walmart understood the DEA
12 expected.

13 So from those conversations,
14 what did Mr. Culver take away as to what the
15 DEA would require from a monitoring program?

16 MS. TABACCHI: Object to the
17 form. Beyond the scope.

18 THE WITNESS: We didn't discuss
19 in very specific detail any specific
20 ask.

21 What I do know is that the
22 programming that was implemented was
23 the result of those conversations.

24 Q. (BY MR. BOWER) Okay. Were the

1 there's not a change that's
2 specifically tied to the letter.

3 Q. (BY MR. BOWER) No one at
4 Walmart was concerned that Walmart should no
5 longer rely on implicit or explicit guidance
6 from the DEA?

7 MS. TABACCHI: Object to the
8 form.

9 THE WITNESS: So we continued
10 our collaborative work with the DEA.
11 But we didn't rely on a yes-or-no
12 opinion from the DEA. We would put
13 policies, practices in place, and then
14 communicate with the DEA over time and
15 make changes if there were changes
16 that were suggested, and we
17 implemented changes to our policies
18 independently ahead of DEA approval or
19 blessing.

20 Q. (BY MR. BOWER) Is it Walmart's
21 testimony today that the DEA has ever
22 approved or blessed Walmart's policies for
23 monitoring orders of controlled substances?

24 MS. TABACCHI: Object to the

1 form.

2 THE WITNESS: We've had
3 conversations with the DEA where they
4 agreed with the process that we
5 were -- that we had implemented versus
6 an outright approval.

7 Q. (BY MR. BOWER) And when did
8 those conversations occur, where the DEA
9 occurred with the process that was
10 implemented?

11 A. So Scott Culver relayed to me
12 the conversations that I testified to
13 earlier, with the DEA, around our early
14 programs. And then we have, through audits
15 that were conducted, different -- at the
16 different distribution centers we have
17 associates relaying information from the DEA,
18 with no audit finding any deficiency. And I
19 spoke to Mike Mullins, and he relayed to me
20 that on the DEA audit form, order monitoring
21 was one of the areas that they checked. So
22 from that, we found -- we have not been aware
23 that we've had a deficiency in our program.

24 Q. Well, my question is a little

1 bit different, though. As you sit here
2 today, can you provide to us any specific
3 conversations where the DEA blessed or
4 otherwise endorsed Walmart's suspicious order
5 monitoring program?

6 MS. TABACCHI: Object to the
7 form. Asked and answered.

8 THE WITNESS: No, I testified
9 that there was no specific deeming of
10 appropriateness. There were reviews
11 of our processes over time and never a
12 deficiency noted.

13 Q. (BY MR. BOWER) Other than the
14 audits that you referenced, are there any
15 other specific instances where the DEA
16 reviewed Walmart's procedures for suspicious
17 order monitoring for controlled substances?

18 MS. TABACCHI: Object to the
19 form.

20 THE WITNESS: We've had
21 communication around specific tenets
22 of the order monitoring, but not a --
23 not a review. So I think
24 communication, not necessarily a

1 the drug that was included in that
2 order.

3 Q. (BY MR. BOWER) Okay. And
4 Walmart doesn't dispute that it had that
5 obligation in 2007; correct?

6 MS. TABACCHI: Object to the
7 form. What obligation?

8 Q. (BY MR. BOWER) The obligation
9 that we've been talking about. To --

10 MS. TABACCHI: You're
11 paraphrasing.

12 Q. (BY MR. BOWER) -- report as
13 suspicious an order that deviates
14 substantially from a normal pattern.

15 MS. TABACCHI: Object to the
16 form.

17 THE WITNESS: Our programs were
18 in place to meet those obligations.

19 Q. (BY MR. BOWER) Did Walmart --
20 in 2000 -- let me strike that.

21 In January 2008, was Walmart
22 reporting as suspicious orders that deviated
23 substantially from a normal pattern, "yes" or
24 "no"?

1 MS. TABACCHI: Object to the
2 form.

3 THE WITNESS: If they were
4 determined to deviate from a pattern,
5 our program would have been to notify
6 the DEA.

7 Q. (BY MR. BOWER) And that's true
8 in January of 2008; correct?

9 A. Yes.

10 Q. Okay. And in January 2008,
11 would Walmart have reported to the DEA an
12 order that deviated substantially from a
13 normal size?

14 MS. TABACCHI: Object to the
15 form.

16 MR. BOWER: I'll strike that.

17 Q. (BY MR. BOWER) Does Walmart
18 agree that in January of 2008, it was
19 obligated to report to the DEA orders that
20 deviated from a normal size?

21 MS. TABACCHI: Object to the
22 form. Calls for a legal conclusion.

23 THE WITNESS: Yes. Orders
24 deviating from -- I'm sorry. I --

1 "orders deviating from a normal size,"
2 are you reading that from the ...

3 Q. (BY MR. BOWER) I'm not reading
4 that from anywhere. It's just a question.

5 MS. TABACCHI: That's the
6 problem.

7 MR. BOWER: I don't think I
8 have to read my questions from
9 somewhere unless I'm familiar with
10 some --

11 MS. TABACCHI: If you're going
12 to try to represent what the law is --

13 MR. BOWER: I'm asking the
14 question.

15 Q. (BY MR. BOWER) Does Walmart
16 agree that in January of 2008, it had an
17 obligation to report orders that deviated
18 substantially from a normal size?

19 MS. TABACCHI: Object to the
20 form. Calls for a legal conclusion.

21 THE WITNESS: If we detected an
22 order that deviated from size and
23 could not -- and could not explain the
24 reason for that, therefore deeming

1 that order suspicious, we would have
2 contacted the DEA, notified the DEA.

3 Q. (BY MR. BOWER) So is it a true
4 statement that in January 2008, Walmart would
5 only contact the DEA for an order that it
6 determined was an unusual size if it could
7 not explain the reason for the size?

8 MS. TABACCHI: Object to the
9 form.

10 THE WITNESS: Our policies and
11 procedures incorporated an evaluation
12 of the order for many -- across the
13 circumstances of the order.

14 So there were several factors
15 that went into play.

16 Q. (BY MR. BOWER) Okay. And
17 we'll get back to those specific programs in
18 a bit. Let's just finish with this letter
19 while we have it in front of us.

20 Can we look for a moment at
21 that last sentence on that first page?

22 And I'll just read it for the
23 record. "The determination of whether an
24 order is suspicious depends not only on the

1 ordering pattern of the particular customer,
2 but also on the patterns of the registrant's
3 customer base and the patterns throughout the
4 relevant segment of the regulated industry."

5 Do you see that?

6 A. Yes, I see that.

7 Q. Did Walmart's policies and
8 procedures as of January 2008 take into
9 account this criteria as defined here by
10 Mr. Rannazzisi that I just read?

11 MS. TABACCHI: Object to the
12 form.

13 THE WITNESS: So our policies
14 and procedures were developed with our
15 understanding of what we were required
16 to -- our -- the obligations that we
17 had under the Controlled Substances
18 Act, in conversation with DEA agents
19 throughout the entirety of our
20 distribution of controlled substances.

21 Q. (BY MR. BOWER) Now, is it
22 Walmart's position that those conversations
23 somehow superseded this communication from
24 Mr. Rannazzisi?

1 MS. TABACCHI: Object to the
2 form.

3 THE WITNESS: We were working
4 collaboratively with the DEA agents
5 that we had on the ground that were in
6 our buildings and saw our operations.
7 And so as time went on, and our
8 business evolved, our practices
9 evolved, we remained in communication
10 with those DEA agents that were
11 actually in our buildings.

12 Q. (BY MR. BOWER) Okay. But
13 Mr. Rannazzisi is telling you here, right,
14 that Walmart should not rely on
15 communications with the DEA; correct?

16 MS. TABACCHI: Object to the
17 form.

18 Q. (BY MR. BOWER) Do you agree
19 with that?

20 MS. TABACCHI: Mischaracterizes
21 the exhibit. Object to the form.

22 THE WITNESS: We continued to
23 communicate with the DEA. We had a
24 good collaborative relationship with

1 helpful. It starts with "This regulation."
2 And it states, "This regulation clearly
3 places the responsibility on the registrant
4 to design and operate such a system.
5 Accordingly, DEA does not approve or
6 otherwise endorse any specific system for
7 reporting suspicious orders."

8 Do you see that?

9 MS. TABACCHI: Object to the
10 form. Lack of foundation. Beyond the
11 scope of the notice.

12 THE WITNESS: Yes, I see that.

13 Q. (BY MR. BOWER) So if, in fact,
14 Walmart did receive this letter in 2012, then
15 it was again put on notice that it shouldn't
16 rely on its communications with the DEA for
17 approving its program for monitoring orders
18 of controlled substances. Correct?

19 MS. TABACCHI: Object to the
20 form. Calls for a legal conclusion.
21 Improper hypothetical. Beyond the
22 scope of the notice.

23 THE WITNESS: So -- so, again,
24 we weren't relying on them to endorse

1 a specific system. I mean, I can't --
2 I can't read into what is intended by
3 this. We knew that our responsibility
4 was our own responsibility. And that
5 if there was a program in place, it
6 was ours to develop.

7 We did not rely on the DEA to
8 say, "This system is blessed, move
9 forward."

10 We implemented programs over
11 time, that we had communications with
12 the DEA, and had -- and did not have
13 an indication from them that there
14 were gaps.

15 Q. (BY MR. BOWER) And during this
16 time period from 2006 through and after 2012,
17 Walmart was registered with the DEA to
18 manufacture or distribute controlled
19 substances; correct?

20 MS. TABACCHI: Object to the
21 form.

22 THE WITNESS: Can you state
23 your dates again? I missed the date.

24 Q. (BY MR. BOWER) Sure.

1 Beginning at least as early as January 1st,
2 2006, and through 2012, Walmart was
3 registered with the DEA to manufacture or
4 distribute controlled substances; correct?

5 MS. TABACCHI: Object to the
6 form. Misstates the witness's
7 testimony.

8 MR. BOWER: Well, let me ask
9 it, then.

10 Q. (BY MR. BOWER) Was Walmart
11 registered to distribute controlled
12 substances with the DEA?

13 MS. TABACCHI: Object to the
14 form. Time period.

15 MR. BOWER: Ever.

16 THE WITNESS: Yes.

17 Q. (BY MR. BOWER) During what
18 time period was Walmart registered?

19 A. From the time period at least
20 from 2006 through the time that we ceased
21 distribution in 2018.

22 Q. Okay. And would you expect
23 that -- let me strike that.

24 Does that registration require

1 MS. TABACCHI: So you're not
2 asking her questions about this. This
3 is just for her reference?

4 MR. BOWER: Yes. And I'm going
5 to have specific questions on it, I
6 believe. But yes, it's mostly for her
7 reference and to confirm what's
8 written here.

9 Q. (BY MR. BOWER) So the first
10 question would be what were Walmart's
11 policies and procedures in place in 2006, to
12 monitor for orders of controlled substances?

13 A. So the policies that we had in
14 2006 included work that the associates in the
15 distribution center themselves would do based
16 on monitoring orders.

17 We were running -- and so -- so
18 as to those orders, if an order was
19 identified, they would alert a manager, and a
20 manager would work with the operations
21 leadership to determine the reason for that.

22 Q. Now, if you look at Walmart's
23 responses to the combined discovery requests,
24 on page 4, the first bullet point, is that

1 the policy you're referring to? Where it
2 says "From as early as 1994 until 2010,
3 employees in Walmart's pharmacy distribution
4 centers reviewed controlled drug stock
5 exception reports, followed up on orders by
6 speaking with pharmacists, and escalated
7 issues to market and/or regional leadership
8 as needed to investigate orders and to
9 resolve concerns."

10 Is that the policy you're
11 referring to?

12 A. Yes. As well as the bullet
13 that's at the very bottom of the page. So
14 I'm on my document that, for the entire
15 relevant time period, our distribution
16 associates monitored orders.

17 Q. Okay. Now, let's go in 2006,
18 what specifically were the associates doing
19 to monitor orders?

20 MS. TABACCHI: Object to the
21 form.

22 THE WITNESS: They were
23 monitoring orders as they came into
24 the distribution center, and again

1 Walmart hold that order prior to shipping it?

2 A. They would hold that order,
3 conduct outreach to understand the nature of
4 the order, and then at the -- at the point at
5 which they were able to clear that order,
6 they -- that's the point at which it would be
7 shipped.

8 Q. And how -- how would Walmart go
9 about holding the order?

10 A. It was a -- it was a procedure
11 within the -- within the distribution center
12 itself. As -- as the orders were worked,
13 there was constant communication between the
14 associates and management. And so they had
15 to pick up the phone and call the -- call a
16 store or market director at that moment.
17 That's the process that they went through.

18 Q. Okay. So let's just walk
19 through that process. Okay?

20 We're in September 2007 in
21 DC 6045; okay? An order comes in from Ohio
22 for ten bottles of Oxy 5s.

23 Okay?

24 100 dosages per bottle. Okay?

1 Q. (BY MR. BOWER) And what
2 information would they seek from folks like
3 you during the 2007 time period?

4 A. They would -- they would -- if
5 it was escalated to me, they would want to
6 know if I had information about a specific
7 order that they might be asking about.

8 Q. What type of information would
9 you have access to that they wouldn't during
10 this time period?

11 A. Well, I had supervision -- I
12 had responsibility for the pharmacies that
13 they were distributing to.

14 So could you -- I could go
15 physically stand in the pharmacy and
16 understand what the need for the order was
17 that was -- that they were questioning.

18 Q. Wait, your answer to my
19 previous question was, "If it was escalated
20 to me, they would want to know if I had
21 information about a specific order that they
22 might be asking about."

23 What specific information would
24 they be seeking from folks that were in your

1 position?

2 MS. TABACCHI: Object to the
3 form.

4 THE WITNESS: The purpose of
5 the order from the pharmacy that I
6 supervised.

7 Q. (BY MR. BOWER) And how would
8 the folks in your position determine what the
9 purpose of that order was?

10 A. I would --

11 MS. TABACCHI: Object to the
12 form.

13 THE WITNESS: -- do one of
14 several things that might include
15 talking to a pharmacist, talking to a
16 pharmacy manager. I could go on-site.
17 I could look at their -- the specifics
18 around that drug.

19 There were -- there was a lot
20 of information that I had access to,
21 because I supervised those pharmacies.

22 Q. (BY MR. BOWER) Well, let's
23 break that down. You give us some things you
24 would do. Right? So what would you talk to

1 a pharmacist about?

2 A. I would ask them why they
3 needed the order.

4 Q. And would you rely on what they
5 told you?

6 A. It would depend on the
7 circumstance --

8 Q. Okay.

9 A. -- of the response.

10 Q. Can you recall any specific
11 time where you asked a pharmacist a question
12 and you needed more follow-up?

13 MS. TABACCHI: Object to the
14 form. Beyond the scope.

15 THE WITNESS: I don't recall a
16 specific situation.

17 Q. (BY MR. BOWER) Not a single
18 time that you can recall specifically?

19 MS. TABACCHI: Same objections.

20 THE WITNESS: No, I --

21 Q. (BY MR. BOWER) Okay. And the
22 second thing you mentioned was you could go
23 onsite. What would you do when you went
24 onsite?

1 Q. And this is when Walmart first
2 implemented order alerts in Reddwerks;
3 correct?

4 A. Yes.

5 Q. Do you know when in 2011
6 Walmart first implemented order alerts in
7 Reddwerks?

8 A. I don't know the exact date.

9 Q. Is that something you prepared
10 to testify on today?

11 MS. TABACCHI: Object to the
12 form.

13 THE WITNESS: I don't have an
14 exact date.

15 Q. (BY MR. BOWER) Do you know
16 whether it was -- could it have been 2012?

17 A. No. It was 2011.

18 Q. And what makes you so certain
19 it was 2011?

20 A. Because of the documentation
21 I've been given.

22 Q. Can you refer to the specific
23 document that you're thinking of?

24 A. Yes.

1 was that is the correct time frame for these
2 alerts.

3 Q. And other than your
4 understanding and the document itself, is
5 there any other basis for that testimony?

6 MS. TABACCHI: Object to the
7 form. Asked and answered.

8 THE WITNESS: My interview and
9 the date on this document.

10 Q. (BY MR. BOWER) Did you, for
11 example, review any flagged orders during
12 this time period?

13 A. I did not.

14 Q. Okay. And I just want to ask a
15 little bit more. I understand -- strike
16 that.

17 Do you know whether during this
18 time period reflected in bullet point 4
19 there, whether Reddwerks was flagging orders
20 for non-controlleds of 50 bottles or more?

21 A. Yes.

22 MS. TABACCHI: Object to the
23 form.

24 THE WITNESS: The Reddwerks

1 Q. No. My question is Reddwerks
2 enhancements.

3 A. The enhanced --

4 Q. Yes.

5 A. Okay. Thank you.

6 Q. Yeah. Sorry.

7 A. The enhanced thresholds were
8 calculated using a year's worth of shipment
9 data, and then applying a formula, which was
10 the average weekly order, plus three standard
11 deviations over that 52-week shipment date.

12 Q. And when that formula was used,
13 would that provide the enhancements for a
14 particular store?

15 MS. TABACCHI: Object to the
16 form.

17 THE WITNESS: It was store and
18 item specific. And there were
19 additional defaults that were applied
20 to those thresholds as they were
21 calculated.

22 Q. (BY MR. BOWER) And can you
23 describe for us how those defaults -- let me
24 break that down a little bit.

1 How did Walmart go about
2 determining what the defaults would be?

3 A. So again, based on enhancing
4 what we had in place, we continued to use
5 that 50-unit limit. It was applied a little
6 bit differently in this context because we
7 took -- we took the dosage units and dropped
8 those down to item units to not exceed
9 5,000 units.

10 There was a default minimum
11 alert of 2,000 units applied, and then for
12 non-traited items for that location, there
13 was a limit set for a thousand dosage units.

14 Q. And I just have a couple of
15 questions to follow up on that. But let me
16 ask you this: What do you mean by
17 "non-traited items for that location"?

18 A. So the -- for certain items, we
19 might have had two supplier agreements in
20 place. And so stores would be traited for
21 one supplier's item. And that normally
22 happened when there could be supply
23 interruption.

24 And so if, for some reason, the

1 bullet point in the combined discovery
2 responses for a moment if we could. Same
3 bullet point referencing the enhanced
4 thresholds in Reddwerks.

5 So Walmart states that it
6 "implemented enhanced thresholds in Reddwerks
7 and the tiered review process."

8 Do you see that?

9 A. Yes.

10 Q. What is meant by a tiered
11 review process?

12 A. The process began to move --
13 still the process at the distribution center
14 was in place. But those alerts were then
15 reviewed by the logistics compliance team.
16 And then the tiering was that practice
17 compliance also was involved. So there were
18 additional teams that were involved in the
19 review.

20 Q. And is that tiered review
21 process reflected in any one of these written
22 policies and procedures on the previous page?

23 A. Yes.

24 Q. Okay.

1 A. And those would be -- and
2 again, I have these in date order.

3 Q. Or if you give me the date, I
4 can point you to the tab. I have the dates
5 in front of me.

6 A. Sure. That tiered review
7 process started in 2015, the Bates No. 963 --

8 Q. Okay.

9 A. -- on the distribution center
10 policy.

11 Q. Okay. So that would be tab 4
12 of Exhibit 7. If you could just confirm.
13 Turn to tab 4.

14 A. And actually, it's in effect in
15 September. So tab 3. It's also in effect in
16 this policy as well.

17 Q. Okay. So the tiered review
18 process that is referenced in the bullet
19 point three up from the bottom on the
20 following page is reflected in both tabs in 3
21 and 4; is that correct?

22 A. It is. That is correct. It's
23 reflected in the procedure.

24 Q. Now, how did the Reddwerks

1 A. I see that.

2 Q. Did Walmart's program, prior to
3 Masters, take into consideration that
4 reducing the size of an order in order to
5 ship the order and no longer trigger a hold
6 would be inappropriate?

7 MS. TABACCHI: Object to the
8 form. Beyond the scope of the notice.
9 I don't even understand what
10 you're asking.

11 Q. (BY MR. BOWER) Do you
12 understand what I'm asking?

13 A. Can you repeat?

14 Q. Sure.

15 Prior to Masters, did Walmart
16 have any policy and procedure in place that
17 would prevent an order from being reduced in
18 size and then shipped prior to due diligence
19 being performed?

20 MS. TABACCHI: Object to the
21 form.

22 THE WITNESS: I think there
23 were a couple of negatives in there.

24 So what -- our policies were designed

1 to detect orders of interest. We
2 conducted due diligence. And if an
3 order was determined to be suspicious,
4 we did not ship and notified DEA.

5 Q. (BY MR. BOWER) So let me just
6 revamp my question because I think you may
7 have misunderstood my question.

8 My question is this: Prior to
9 Masters, did Walmart have any policy or
10 procedure in place that would prevent an
11 order from being reduced in size and then
12 shipped prior to due diligence being
13 performed?

14 MS. TABACCHI: Object to the
15 form.

16 THE WITNESS: That would
17 prevent an order from being ...

18 Our procedures in the
19 distribution center were specific to
20 oxycodone 30, and we did reduce
21 those -- we did reduce those orders.

22 Q. (BY MR. BOWER) Well, Walmart
23 didn't -- strike that.

24 Walmart's reduction of orders

1 form. Asked and answered.

2 THE WITNESS: I think you have
3 to consider the other parameters that
4 were in place. That in and of itself,
5 the 50 alert did not -- there were
6 always other elements in place.

7 Q. (BY MR. BOWER) Does Walmart
8 agree that it would be better to flag an
9 alert and review it as a potential false
10 positive than to ship an order that was
11 potentially suspicious?

12 MS. TABACCHI: Object to the
13 form.

14 THE WITNESS: Our intent was
15 never to ship an order that was deemed
16 suspicious.

17 Q. (BY MR. BOWER) Well, let me
18 ask you this. What would be worse, flagging
19 an order as a false positive or shipping a
20 suspicious order?

21 MS. TABACCHI: Object to the
22 form.

23 THE WITNESS: I think you have
24 to look at the circumstances. Our

1 intent was never to ship a suspicious
2 order. However, I think that if
3 there's too many false positives, it
4 could lead to missing --

5 I think one could lead to the
6 other from an unintended consequence
7 perspective. That's why we were
8 working to get it right knowing that
9 neither situation was the ideal. And
10 that's why we continued to adjust and
11 improve and make modifications to our
12 program over a continuum of time.

13 MS. TABACCHI: Can we just take
14 a break when you come to a right
15 moment?

16 MR. BOWER: Sure. Go ahead.

17 THE VIDEOGRAPHER: 4:20. We
18 are off the video record.

19 (Recess taken, 4:20 p.m. to
20 4:43 p.m.)

21 THE VIDEOGRAPHER: 4:43. We
22 are on the video record.

23 Q. (BY MR. BOWER) All right.

24 We're back on the record. I just would ask

1 Q. (BY MR. BOWER) Okay. We're in
2 September of 2015. Right? This email?

3 A. Yes.

4 Q. When was the next point in time
5 that Walmart improved its review of orders of
6 interest?

7 MS. TABACCHI: Object to the
8 form.

9 MR. BOWER: I'll strike that.

10 Q. (BY MR. BOWER) After
11 September 21st, 2015, when was the next time
12 Walmart improved its suspicious order
13 monitoring program?

14 MS. TABACCHI: Object to the
15 form.

16 THE WITNESS: So there were
17 ongoing processes that were being
18 worked on, the most significant of
19 which was the switch from the
20 Reddwerks program to the Buzzeeo
21 program that occurred in 2017.

22 Q. (BY MR. BOWER) Before we get
23 to the switch to Buzzeeo in 2017, can you
24 provide any more specificity as to what you

1 A. We were documenting before --
2 let me correct that. We were documenting the
3 review of the orders of interest in Archer
4 with the Reddwerks enhancement.

5 Q. So is it accurate, then, to say
6 that Walmart began documenting its review of
7 orders of interest in Archer on or about
8 August of 2015?

9 A. We were documenting those
10 reviews with that Reddwerks enhancement.
11 That was part of the enhancement that was
12 implemented.

13 Q. Let me try to get it a
14 different way.

15 When did Walmart first start
16 documenting its due diligence for orders of
17 interest in Archer?

18 A. That was in -- that was in the
19 2015 time frame.

20 Q. Can you put a finer point on
21 that than a 12-month period?

22 And again, just for the record,
23 you're referring to your binder that you
24 brought with you today?

1 Okay?

2 A. Okay.

3 Q. Unless it's -- is it something
4 that your memory has been refreshed over the
5 break?

6 A. It is information specific to
7 one of the exhibits.

8 Q. Okay. Well, I guess it's a
9 little bit unusual, but let's hear it.

10 A. So in -- as we were talking
11 about the exhibit that -- I'll have to find
12 it -- that showed our reporting post
13 Masters --

14 Q. Mm-hmm.

15 A. -- of orders of interest, where
16 we reported orders of interest prior to due
17 diligence to determine whether or not they
18 were suspicious?

19 Q. Okay.

20 A. We did report those to DEA.
21 And after that reporting, we had two
22 different DEA offices contact us and ask us
23 why we were reporting those and asked us to
24 stop reporting.

1 beyond the scope. Object to the form.

2 THE WITNESS: My preparation
3 indicates that we did not participate
4 in marketing of opioids.

5 Q. (BY MR. BOWER) But my question
6 is a little bit different. Did Walmart
7 consider that, marketing plans that were
8 going to be implemented by manufacturers in
9 deciding whether to purchase opioid products?

10 MS. TABACCHI: Objection.

11 Object to the form, beyond the scope.

12 THE WITNESS: I don't have that
13 detail.

14 MR. BOWER: Okay.

15 Q. (BY MR. BOWER) Would you agree
16 with me that Walmart -- sorry, just give me a
17 second.

18 Would you agree with me that
19 Walmart was involved in NACDS going back to
20 the early 2000s?

21 A. Yes.

22 MS. TABACCHI: Object to the
23 form.

24 (Whereupon, Deposition Exhibit